

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STEVEN J. HAYES,

Plaintiff,

v.

ROBERT GILMORE, *Facility Manager SCI
Greene*, TRACEY SHAWLEY, *Grievance
Officer SCI Greene*, DOCTOR PILLAI,
Treating Psychiatrist SCI Greene, EARL
BAKER, *RN SCI Greene*, DAN KARPENCY,
RN SCI Greene, PSS WAINE, *Treating Psych
SCI Greene*, PSA LINDSEY, *Treating Psych
SCI Greene*, ADAM SEDLOCK, *Treating
Psychologist SCI Greene*, SHELLY
MANKEY, *Unit Manager SCI Greene*,
MAJOR CORO, *Unit Major, SCI Greene*, LT
STICKLES, *Unit Brass SCI Greene*, DORINA
VARNER, *(SOIGA) Central Office*, ROBERT
MARSH, *Chief Psych Central Office*, and
JOHN/JANE DOES, to be named after review
of discovery documents. All named
defendants sued in both individual and official
capacity,

Defendants.

Civil Action No. 17-1327

Judge Arthur J. Schwab

Chief Magistrate Judge Maureen P. Kelly

MEMORANDUM ORDER ADOPTING REPORT AND RECOMMENDATION

ARTHUR J. SCHWAB, United States District Judge

This prisoner civil rights suit was commenced by Plaintiff Steven J. Hayes, proceeding *pro se*, on October 16, 2017, and was referred to Chief United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court for Magistrate Judges. Thereafter, Motions to Dismiss were filed on behalf of all Defendants, ECF Nos. 23, 25, on the basis of Plaintiff's failure to state

any claim upon which relief may be granted. Plaintiff filed his brief in opposition to the Motion to Dismiss on March 22, 2018.

On May 7, 2018, Chief Magistrate Judge Kelly filed a Report and Recommendation, ECF No. 35, recommending that: (1) all claims against Defendants Gilmore, Sedlock, Mankey, and Caro, be dismissed as a result of Plaintiff's failure to allege facts to support a finding that any of these Defendants were personally involved in the alleged unconstitutional conduct at issue; (2) all claims against Defendants Gilmore, Shawley, Sedlock, Varner, and Marsh be dismissed because Plaintiff alleged that each is liable to him as a result of his or her participation in the prison grievance process, and such involvement cannot give rise to the required finding of personal involvement in the underlying alleged unconstitutional conduct; (3) all claims against all DOC Defendants and Dr. Pillai be dismissed due to Plaintiff's failure to allege facts sufficient to establish an Eighth Amendment medical indifference claim; and, (4) Plaintiff's Eighth Amendment failure to protect claim be dismissed against all Defendants because Plaintiff failed to allege any facts upon which liability for deliberate indifference to his safety could be imposed.

Plaintiff was served with a copy of the Report and Recommendation ("R&R") and advised that any objections thereto were to be filed by May 31, 2018. Thereafter, Plaintiff filed his objections on May 25, 2018. ECF Nos. 38.

Where, as here, objections have been filed, the court is required to make a *de novo* determination about those portions of the R&R to which objections were made. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The district court may accept, reject, or modify the recommended disposition, as well as receive further evidence or return the matter to the magistrate judge with instructions.

The Court finds that Plaintiff's objections do not undermine the recommendation of the Chief Magistrate Judge. Plaintiff raises several objections, none of which require additional comment. Plaintiff's objections are nothing more than a restatement of his initial arguments, which were discussed and soundly rejected in the R&R. The Chief Magistrate Judge thoroughly analyzed each of Plaintiff's claims against all Defendants and explained in detail why Plaintiff's claims could not survive the motions to dismiss.

After de novo review of the pleadings and documents in this case, together with the R&R, and the Objections thereto, the Court finds that the R&R should be adopted as the opinion of the Court, with modification to reflect that this Court finds that it would be futile to allow Plaintiff the opportunity to amend, given the close monitoring and care provided to Plaintiff throughout the period at issue. Under the circumstances alleged in the Complaint, Plaintiff received immediate and frequent medical and mental health assessment, care, and, when indicated, treatment. Accordingly, the Court finds that Plaintiff will not be able to allege facts sufficient to meet the stringent criteria for an Eighth Amendment deliberate indifference claim with regard to medical and/or mental health treatment, or for the alleged denial of protection for Plaintiff's safety. Accordingly, the following Order is entered:

AND NOW, this 29th day of May, 2018,

IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendants Lindsey, Dorina Varner, Earl Baker, Robert Gilmore, Sitckles, Waine, Robert Marsh, Coro, Tracey Shawley, Shelly Mankey, Dan Karpency, and Adam Sedlock, ECF No. 23, is **GRANTED**.

IT IS FURTHER ORDERED that the Motion to Dismiss filed by Defendant Pillai, ECF No. 25, is **GRANTED**.

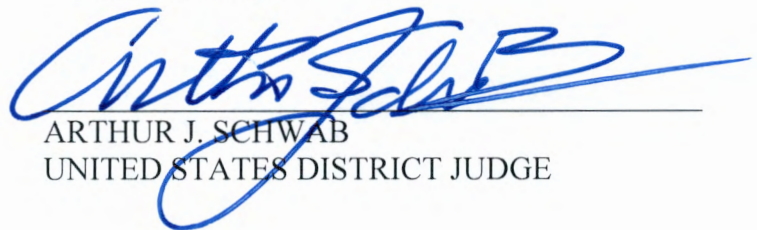
IT IS FURTHER ORDERED that the Complaint, ECF No. 6, is **DISMISSED** with prejudice, as it would be futile to allow Plaintiff the opportunity to amend.

IT IS FURTHER ORDERED that the Report and Recommendation, ECF No. 35, is **ADOPTED** as the Opinion of the Court, with the modification that Plaintiff's Complaint is dismissed with prejudice.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

BY THE COURT:



ARTHUR J. SCHWAB
UNITED STATES DISTRICT JUDGE

cc: The Honorable Maureen P. Kelly
Chief United States Magistrate Judge

All counsel of record by Notice of Electronic Filing

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